

A bill for an act
relating to state government; establishing the Minnesota False Claims Act;
assessing penalties; establishing a false claims account; appropriating money;
proposing coding for new law as Minnesota Statutes, chapter 15C.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[15C.01] DEFINITIONS.**

Subdivision 1. **Scope.** For purposes of this chapter, the terms in this section have the meanings given them.

Subd. 2. **Claim.** "Claim" includes a request or demand, whether under a contract or otherwise, for money or property that is made by a contractor, grantee, or other recipient to the state or a political subdivision if the state or the political subdivision has provided or will provide a portion of the money or property that is requested or demanded, or if the state or the political subdivision has reimbursed or will reimburse the contractor, grantee, or other recipient for a portion of the money or property that is requested or demanded.

Subd. 3. **Knowing and knowingly.** "Knowing" and "knowingly" mean that a person, with respect to information:

(1) has actual knowledge of the information;

(2) acts in deliberate ignorance of the truth or falsity of the information; or

(3) acts in reckless disregard of the truth or falsity of the information.

No proof of specific intent to defraud is required, but in no case is a person who acts merely negligently, inadvertently, or mistakenly with respect to information deemed to have acted knowingly.

Subd. 4. **Original source.** "Original source" means a person who has direct and independent knowledge of information that is probative of an essential element of the

allegations in an action brought under this chapter that was not obtained from a public source and who either voluntarily provided the information to the state or the political subdivision before bringing an action based on the information or whose information provided the basis for or caused an investigation, hearing, audit, or report that led to the public disclosure of the allegations or transactions upon which an action brought under this chapter is based.

Subd. 5. **Person.** "Person" means a natural person, partnership, corporation, association or other legal entity but does not include the state or a political subdivision.

Subd. 6. **Political subdivision.** "Political subdivision" means a political subdivision of the state and includes a department or agency of a political subdivision.

Subd. 7. **Prosecuting attorney.** "Prosecuting attorney" means:

(1) the attorney general, if the false or fraudulent claim involves money, property, or services provided by the state; or

(2) the county attorney, city attorney, or other attorney representing a political subdivision, if the false or fraudulent claim involves money, property, or services provided by the political subdivision.

Subd. 8. **State.** "State" means the state of Minnesota and includes a department or agency of the state.

Sec. 2. [15C.02] LIABILITY FOR CERTAIN ACTS.

(a) A person who commits any act described in clauses (1) to (7) is liable to the state or the political subdivision for a civil penalty of not less than \$5,500 and not more than \$11,000 per false or fraudulent claim, plus three times the amount of damages that the state or the political subdivision sustains because of the act of that person, except as otherwise provided in paragraph (b):

(1) knowingly presents, or causes to be presented, to an officer or employee of the state or a political subdivision a false or fraudulent claim for payment or approval;

(2) knowingly makes or uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the state or a political subdivision;

(3) knowingly conspires to either present a false or fraudulent claim to the state or a political subdivision for payment or approval or makes, uses, or causes to be made or used a false record or statement to obtain payment or approval of a false or fraudulent claim;

(4) has possession, custody, or control of public property or money used, or to be used, by the state or a political subdivision and knowingly delivers or causes to be

delivered to the state or a political subdivision less money or property than the amount for which the person receives a receipt;

(5) is authorized to prepare or deliver a receipt for money or property used, or to be used, by the state or a political subdivision and knowingly prepares or delivers a receipt that falsely represents the money or property;

(6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state or a political subdivision who lawfully may not sell or pledge the property; or

(7) knowingly makes or uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state or a political subdivision.

(b) The court may assess not less than two times the amount of damages that the state or the political subdivision sustains because of the act of the person if:

(1) the person committing a violation under paragraph (a) furnished an officer or employee of the state or the political subdivision responsible for investigating the false or fraudulent claim violation with all information known to the person about the violation within 30 days after the date on which the person first obtained the information;

(2) the person fully cooperated with any investigation by the state or the political subdivision of the violation; and

(3) at the time the person furnished the state or the political subdivision with information about the violation, no criminal prosecution, civil action, or administrative action had been commenced under this chapter with respect to the violation and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) A person violating this section is also liable to the state or the political subdivision for the costs of a civil action brought to recover any penalty or damages.

(d) A person is not liable under this section for mere inadvertence or mistake with respect to activities involving a false or fraudulent claim.

(e) An employer is not liable for an act committed by a nonmanagerial employee that violates this section, unless the employer had knowledge of the act, ratified the act, or was reckless in the hiring or supervision of the employee.

Sec. 3. [15C.03] EXCLUSION.

This chapter does not apply to claims, records, or statements made under portions of Minnesota Statutes relating to taxation.

Sec. 4. [15C.04] RESPONSIBILITIES OF PROSECUTING ATTORNEY.

4.1 Subdivision 1. **General.** A prosecuting attorney may investigate violations of
4.2 section 15C.02. If a prosecuting attorney finds that a person has violated or is violating
4.3 section 15C.02, the prosecuting attorney may bring a civil action under this chapter
4.4 against the person to enjoin an act in violation of section 15C.02 and to recover damages
4.5 and penalties.

4.6 Subd. 2. **Investigatory powers.** (a) In connection with an investigation under this
4.7 section, the prosecuting attorney may obtain discovery from any person regarding any
4.8 matter, fact, or circumstance that is not privileged and is relevant to the investigation. The
4.9 discovery may be obtained without commencement of a civil action and without leave
4.10 of court. The applicable protective provisions of rules 26.02, 26.03, and 30.04 of the
4.11 Minnesota Rules of Civil Procedure apply to discovery procedures under this section.
4.12 The prosecuting attorney or any person to whom discovery is directed may apply to and
4.13 obtain leave of the district court in order to reduce or extend the time requirements of this
4.14 subdivision, and upon a showing of good cause, the district court shall order the reduction
4.15 or extension. In order to obtain discovery, the prosecuting attorney may:

4.16 (1) serve written interrogatories on any person. Within 20 days after service of
4.17 interrogatories, separate written answers and objections to each interrogatory must be
4.18 mailed to the prosecuting attorney;

4.19 (2) upon reasonable written notice of no less than 15 days, require any person to
4.20 produce for inspection and copying any documents, papers, books, accounts, letters,
4.21 photographs, objects, or tangible things that are in the possession, custody, or control
4.22 of that person; and

4.23 (3) upon reasonable written notice of no less than 15 days, take the testimony of any
4.24 person by deposition as to any fact or opinion relevant to the investigation.

4.25 (b) If a person fails or refuses to answer interrogatories, to produce materials, or
4.26 to be examined under oath as required under paragraph (a), upon notice the prosecuting
4.27 attorney may apply to a district court and the court, on a showing by the prosecuting
4.28 attorney of cause, may issue an order as may be required to compel compliance with the
4.29 discovery procedures authorized by this subdivision.

4.30 **Sec. 5. [15C.05] PRIVATE REMEDIES; COMPLAINT UNDER SEAL; COPY**
4.31 **OF COMPLAINT AND WRITTEN DISCLOSURE OF EVIDENCE TO BE SENT**
4.32 **TO PROSECUTING ATTORNEY.**

4.33 (a) Except as otherwise provided in this section, a person may maintain an action
4.34 under this chapter on the person's own account and that of the state if money, property,
4.35 or services provided by the state are involved; the person's own account and that of a

political subdivision if money, property, or services provided by the political subdivision are involved; or on the person's own account and that of both the state and a political subdivision if both are involved. After an action is commenced, it may be voluntarily dismissed only if the court and the prosecuting attorney give written consent to the dismissal and their reasons for consenting.

(b) If an action is brought under this section, no other person may bring another action under this section based on the same facts that are the subject of the pending action.

(c) An action may not be maintained under this section:

(1) against the state, the legislature, the judiciary, the executive branch, or a political subdivision, or their respective officers, members, or employees;

(2) if the action is based upon allegations or transactions that are the subject of a civil action or an administrative proceeding for a monetary penalty to which the state or a political subdivision is already a party; or

(3) unless the action is brought by an original source of the information or the prosecuting attorney initiates or intervenes in the action, if the action is based upon the public disclosure of allegations or transactions: (i) in a criminal, civil, or administrative hearing; (ii) in an investigation, report, hearing, or audit conducted by or at the request of the house of representatives or the senate; (iii) by an auditor or the governing body of a political subdivision; or (iv) by the news media.

(d) A complaint in an action under this section must be commenced by filing the complaint with the court in chambers and the court must place it under seal for at least 60 days. No service may be made upon the defendant until the complaint is unsealed.

(e) If a complaint is filed under this section, the plaintiff shall serve a copy of the complaint on the prosecuting attorney in accordance with the Minnesota Rules of Civil Procedure and at the same time shall serve a written disclosure of all material evidence and information the plaintiff possesses.

Sec. 6. [15C.06] PROSECUTING ATTORNEY INTERVENTION; MOTION TO EXTEND TIME; UNSEALING OF COMPLAINT.

(a) Within 60 days after receiving a complaint and disclosure under section 15C.05, the prosecuting attorney shall intervene or decline intervention or, for good cause shown, move the court to extend the time for doing so. The motion may be supported by affidavits or other submissions in chambers.

(b) The complaint must be unsealed after the prosecuting attorney decides whether or not to intervene.

(c) Notwithstanding the prosecuting attorney's decision regarding intervention in an action brought by a plaintiff under section 15C.05, the prosecuting attorney may pursue the claim through any alternate remedy available to the state, including an administrative proceeding to determine a civil monetary penalty. If the prosecuting attorney pursues an alternate remedy in another proceeding, the person initiating the action has the same rights in that proceeding as if the action had continued under section 15C.05. A finding of fact or conclusion of law made in the other proceeding that has become final is conclusive on all parties to an action under section 15C.05. For purposes of this paragraph, a finding or conclusion is final if it has been finally determined on appeal to the appropriate state court, if the time for filing an appeal has expired, or if the finding or conclusion is not subject to judicial review.

Sec. 7. [15C.07] SERVICE OF UNSEALED COMPLAINT AND RESPONSE BY DEFENDANT.

When unsealed, the complaint must be served on the defendant pursuant to Rule 3 of the Minnesota Rules of Civil Procedure. The defendant must respond to the complaint within 20 days after it is served on the defendant.

Sec. 8. [15C.08] PROSECUTING ATTORNEY AND PRIVATE PARTY ROLES.

(a) Except as otherwise provided by this section, if the prosecuting attorney does not intervene at the outset in an action brought by a person under section 15C.05, the person has the same rights in conducting the action as the prosecuting attorney would have. A copy of each pleading or other paper filed in the action and a copy of the transcript of each deposition taken must be mailed to the prosecuting attorney if the prosecuting attorney so requests and pays the cost of doing so.

(b) If the prosecuting attorney elects not to intervene at the outset of the action, the prosecuting attorney may intervene subsequently, upon timely application and good cause shown. If the prosecuting attorney so intervenes, the prosecuting attorney subsequently has primary responsibility for conducting the action.

(c) If the prosecuting attorney elects at the outset of the action to intervene, the prosecuting attorney has the primary responsibility for prosecuting the action. The person who initially brought the action remains a party but the person's acts do not bind the prosecuting attorney.

(d) Whether or not the prosecuting attorney intervenes in the action, the prosecuting attorney may move to dismiss the action for good cause. The person who brought the action must be notified of the filing of the motion and may oppose it and present evidence at the

hearing. The prosecuting attorney may also settle the action. If the prosecuting attorney intends to settle the action, the prosecuting attorney shall notify the person who brought the action. The state or the political subdivision may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in chambers.

Sec. 9. [15C.09] STAY OF DISCOVERY; EXTENSION.

(a) The court may stay discovery by a person who brought an action under section 15C.05 for not more than 60 days if the prosecuting attorney shows that the proposed discovery would interfere with the investigation or prosecution of a civil or criminal matter arising out of the same facts, whether or not the prosecuting attorney participates in the action.

(b) The court may extend the stay upon a further showing that the prosecuting attorney has pursued the civil or criminal investigation or proceeding with reasonable diligence and that the proposed discovery would interfere with its continuation. Discovery may not be stayed for a total of more than six months over the objection of the person who brought the action, except for good cause shown by the prosecuting attorney.

(c) A showing made pursuant to this section must be made in chambers.

Sec. 10. [15C.10] COURT-IMPOSED LIMITATION UPON PARTICIPATION OF PRIVATE PLAINTIFF IN ACTION.

Upon a showing by the prosecuting attorney in an action in which the prosecuting attorney has intervened that unrestricted participation by a person under this chapter would interfere with or unduly delay the conduct of the action, or would be repetitious, irrelevant, or solely for harassment, the court may limit the person's participation by limiting the number of witnesses, the length of the testimony of the witnesses, the cross-examination of witnesses by the person, or by other measures.

Sec. 11. [15C.11] LIMITATION OF ACTIONS; REMEDIES.

(a) An action under this chapter may not be commenced more than three years after the date of discovery of the fraudulent activity by the prosecuting attorney or more than six years after the fraudulent activity occurred, whichever occurs later, but in no event more than ten years after the date on which the violation is committed.

(b) A finding of guilt in a criminal proceeding charging a false statement or fraud, whether upon a verdict of guilty or a plea of guilty or nolo contendere, stops the person

found guilty from denying an essential element of that offense in an action under this chapter based upon the same transaction as the criminal proceeding.

(c) In an action under this chapter, the state or the political subdivision and any plaintiff under section 15C.05 must prove the essential elements of the cause of action, including damages, by a preponderance of the evidence.

Sec. 12. [15C.12] AWARD OF EXPENSES AND ATTORNEY FEES.

If the prosecuting attorney or a person who brought an action under section 15C.05 prevails in or settles an action under this chapter, the court may authorize the prosecuting attorney or person to recover reasonable costs, reasonable attorney fees, and the reasonable fees of expert consultants and expert witnesses. These expenses must be awarded against the defendant and are not allowed against the state or a political subdivision. If the prosecuting attorney does not intervene in the action and the person bringing the action conducts the action and the defendant prevails in the action, the court shall award to the defendant reasonable expenses and attorney fees against the person bringing the action if it finds that the action was clearly frivolous or vexatious or brought solely for harassment. The state or a political subdivision is not liable for expenses, attorney fees, or other costs incurred by a person in bringing or defending an action under this chapter.

Sec. 13. [15C.13] DISTRIBUTION TO PRIVATE PLAINTIFF IN CERTAIN ACTIONS.

If the prosecuting attorney intervenes at the outset in an action brought by a person under section 15C.05, the person is entitled to receive not less than 15 percent or more than 25 percent of any recovery in proportion to the person's contribution to the conduct of the action. If the prosecuting attorney does not intervene in the action at any time, the person is entitled to receive not less than 25 percent or more than 30 percent of any recovery of the civil penalty and damages, or settlement, as the court determines is reasonable. If the prosecuting attorney does not intervene in the action at the outset but subsequently intervenes, the person is entitled to receive not less than 15 percent or more than 30 percent of any recovery, as the court determines is reasonable based on the person's participation in the action before the prosecuting attorney intervened.

Sec. 14. [15C.14] EMPLOYER RESTRICTIONS; LIABILITY.

(a) An employer must not adopt or enforce any rule or policy forbidding an employee to disclose information to the state, a political subdivision, or a law enforcement

agency, or to act in furtherance of an action under this chapter, including investigation for, bringing, or testifying in the action.

(b) An employer must not discharge, demote, suspend, threaten, harass, deny promotion to, or otherwise discriminate against an employee in the terms or conditions of employment because of lawful acts done by the employee on the employee's behalf or on behalf of others in disclosing information to the state, a political subdivision, or a law enforcement agency in furtherance of an action under this chapter, including investigation for bringing or testifying in the action.

(c) An employer who violates this section is liable to the affected employee in a civil action for damages and other relief, including reinstatement, twice the amount of lost compensation, interest on the lost compensation, any special damage sustained as a result of the discrimination, and punitive damages if appropriate. The employer is also liable for expenses recoverable under section 15C.12, including costs and attorney fees.

Sec. 15. **[15C.15] DEPOSIT OF STATE FUNDS; FALSE CLAIMS ACCOUNT.**

Subdivision 1. Deposit of funds. The net proceeds received by the state in an action under this chapter, after distributions made to private plaintiffs and as otherwise required by federal law, must be deposited in the state treasury and credited as follows:

(1) the portion of net proceeds equal to the amount of the actual damages that the state sustains because of an act specified in section 15C.02 must be credited to the fund that sustained the damages;

(2) the portion of net proceeds equal to the additional recovery of federal money authorized by United States Code, title 42, section 1396h, for a recovery under this chapter, as determined by the commissioner of finance, must be credited to the false claims account under subdivision 2, provided that the amount credited may not exceed \$1,000,000 in a fiscal year; and

(3) the remainder of the net proceeds must be credited to the general fund.

Subd. 2. False claims account. A false claims account is established in the special revenue fund in the state treasury. Money in the account is annually appropriated to the attorney general for purposes of this chapter.

Sec. 16. **APPROPRIATION.**

\$2,055,000 is appropriated from the general fund to the commissioner of finance for transfer to the false claims account. This amount must be repaid to the general fund when money is available. This is a onetime appropriation.

- 10.1 Sec. 17. EFFECTIVE DATE.
- 10.2 This act is effective July 1, 2010.